

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2023 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SUKHLAL C PRAJAPATI & ORS
VERSUS
GOVERNMENT OF GUJARAT & ORS

Appearance:

MR AKIL QURESHI for Petitioners
MR VB GHARANIA for Respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 15/08/1999

C.A.V. JUDGMENT

#. Rule. Mr.Gharania waives service of Rule on behalf of respondents.

#. The petitioners are working as peons at various offices of Revenue Department of the Government of Gujarat in Rajkot District. The Government has

introduced a policy for extending its employees, the benefits of higher pay scale on completion of 9 years, 18 years and 27 years respectively. This policy is commonly known as removal of stagnation policy. It is the case of petitioners that they have been given the benefits of this policy on completion of 9 years of service. There is a provision in this policy that an employee who got the benefit of higher pay scale under this policy on his promotion to the higher post will not decline to accept the same and where he does so, the benefits of the higher pay scale shall be taken back.

#. The learned counsel for the petitioners submitted that in class-IV posts, there are four pay scales. So in the class-IV itself three higher pay scales are available and these are being given on promotion. These are promotions in the same category and not to the class-III.

#. In the mid of 1998, the petitioners were given adhoc promotion orders in the post of Process Server and as a result thereof, it would have involved transfer of theirs to far places. The petitioners declined to accept promotions on personal grounds and represented the authorities. In January 1999, the respondents have withdrawn the benefits of the higher pay scale given to the petitioners and hence this Special Civil Application before this Court.

#. During the course of arguments, the learned counsel for the petitioners admitted that the order of withdrawing the benefits of the higher pay-scale has been passed by respondents only in the cases of petitioners No.1, 3 and 5. In view of the statement of fact made by learned counsel for the petitioners, this Special Civil Application on behalf of petitioners No.2, 4 and 6 is not maintainable and accordingly the same is dismissed. Rule discharged.

#. So far as the Special Civil Application pertains to petitioners No. 1,3 and 5, the learned counsel for the petitioners raised manifold contentions challenging the validity, legality and correctness of the order impugned therein. This writ petition has been opposed by respondents. However, in view of the order which I propose to pass in this Special Civil Application, I do not consider it to be necessary and appropriate to refer, deal with and decide the contentions raised by learned counsel for the parties on merits of the matter.

#. It is a case where higher pay scale benefits have been taken back by respondents. Against this order, the

petitioners have remedy of appeal under the Gujarat Civil Services Tribunal Act, 1972. Schedule to this Act and particularly, Entry No.2 thereto provides that an order of the authority resulting in reduction of pay of specified employees is appealable under Section 11 of the said Act. Section 11 of the said Act provides that any specified civil servant aggrieved by any original or appellate order or decision of any officer or authority other than the State Government with respect to any of the matters specified in the schedule may within a period of ninety days, from the date of such order or decision, appeal to the Tribunal against such order or decision, in case where the appeal lies under law to the State Government.

#. On being asked by the Court, the learned counsel for the petitioners does not dispute that the petitioners No.1, 3 and 5 are specified civil servants. The order impugned in this Special Civil Application is appealable under the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and lastly this order is not passed by the State Government. Rule 18 of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971, gives out the list of orders against which appeal lies to the authorities mentioned therein. Reference particularly may have to clause (a) of Sub Rule 1 of Rule 18 of the Rules aforesaid and an order denying or varying to the employees the pay, allowances, pension or other condition of service as regulated by Rules or agreement, is appealable. As against the impugned order, the petitioners have right of appeal before the Gujarat Civil Services Appellate Tribunal. This writ petition, so far it relates to the petitioners No.1, 3 and 5, is dismissed. However, dismissal of this Special Civil Application will not come in the way of the petitioners No.1, 3 and 5 to file appeal before the appellate tribunal and in case they file an appeal within a period of one month from today, the Tribunal shall decide the appeal on merits, i.e. it may not dismiss the same only on the ground of limitation. Rule in this Special Civil Application so far it relates petitioners No.1, 3 and 5 stands discharged accordingly. No order as to costs.

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